

REMARKS

Claims 1-62 are pending. By this Amendment, the specification is replaced by the enclosed substitute specification and claims 1, 24-26, 50-52, 54, 55 and 62 are amended. Reconsideration in view of the above amendments and following remarks is respectfully requested.

Enclosed with this response is a marked-up copy of the specification showing all changes made. No new matter is entered. Entry of the substitute specification is respectfully requested.

Claims 1, 24, 25, 50, 51, 52 54 and 55 were objected to. The objection is respectfully traversed.

Applicants respectfully request clarification of the grounds of objection. The Office Action does not specify any section of 35 U.S.C. or 37 C.F.R. under which the claims are objected to. In the absence of any such grounds it is respectfully submitted that the objection is improper and must be withdrawn.

However, in order to advance prosecution of the application, Applicants provide the following comments. It is respectfully submitted that it is not required of Applicants to specify how much gas is supplied or controlled in any of the claims. 35 U.S.C. §112, second paragraph requires Applicants to particularly point out and distinctly claim the subject matter which they regard as their invention. It is clear from 35 U.S.C. §112, second paragraph that Applicants, not the examiner, defines the invention. Applicants do not regard their invention to be limited to the amount of gas that is supplied or controlled. Accordingly, it is respectfully submitted that it is not required of Applicants to put such limitations in the claims.

Reconsideration and withdrawal of the objection are respectfully requested.

Claims 1, 12, 13, 14, 24, 25, 26, 29, 30, 39, 50-52 and 54-62 were rejected under 35 U.S.C. §102(e) over Nishi (U.S. Patent Application Publication 2001/0015795A1). The rejection is respectfully traversed.

It is respectfully noted that Nishi '795 has a filing date of January 29, 2001. The instant application claims priority to European Application 00304673.7, filed June 1, 2000, and European Application 00304760.2, filed June 6, 2000. Copies of the European priority applications, filed in English, were submitted in the parent application 09/866,875, receipt of which was acknowledged on the Office Action Summary (PTOL-326). Accordingly,

Applicants have established a date of invention of at least June 1, 2000, which is before the January 29, 2001 filing date of Nishi '795. Accordingly, Nishi '795 is not prior art under 35 U.S.C. §102(e).

Reconsideration and withdrawal of the rejection over Nishi '795 are respectfully requested.

Claims 1, 12, 13, 14, 24, 25, 26, 29, 30, 39, 50-52 and 54-62 were rejected under 35 U.S.C. §102(e) over Nishi (U.S. Patent 6,545,746). The rejection is respectfully traversed.

The Office Action on page 3, lines 14-19, alleges that Nishi '746 discloses a radiation-energy detector to determine energy of radiation passing through a region of interactive gas in column 29, line 55-column 30, line 9. The Office Action also alleges that Nishi discloses a concentration controlled volume of radiation absorbent gas to be traversed by a beam of radiation in column 45, lines 17-67. The Office Action also alleges that Nishi supplies and controls absorbent gas to effect a desired non-uniform attenuation in column 45, lines 17-67. It is respectfully submitted that Nishi does not disclose any of these features.

Column 29, lines 55-column 30, line 9 of Nishi '746 discloses that the self-measuring device 31 processes detection signals and image signals from reflective light detecting systems 30a and 30b. The reflectivity of the wafer is monitored based on the amount of light reflected by fiducial mark member FM and illuminance non-uniformity is detected in the exposure area of the wafer. There is no disclosure or suggestion, however, of determining energy of radiation passing through a region of interactive gas.

Nishi '746 discloses in column 45, lines 17-67, that helium gas is supplied through a supply tube 312 into a third unit 311 in order to control the temperature of the projection optical system. However, as disclosed in column 54, lines 64-column 55, line 2, helium gas is inert and does not absorb exposure light. Accordingly, Nishi does not disclose or suggest the supply and control of an absorbent gas, as alleged by the Office Action.

As Nishi '746 does not disclose or suggest an interactive or absorbent gas, Nishi '746 cannot anticipate or render obvious independent claims 1, 24, 25, 26, 50-52, 54, 55 and 62.

Claims 12-14, 29, 30, 39 and 56-61 recite additional features of the invention and are allowable for the same reasons discussed above and for the additional features recited therein.

Reconsideration and withdrawal of the rejection over Nishi '746 are respectfully requested.

Claims 1-62 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-23 of U.S. Patent 6,538,716. The rejection is respectfully traversed.

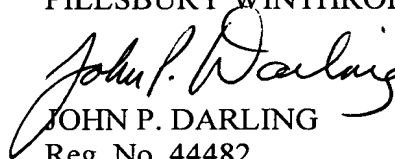
MPEP §804B.1. requires that in order to establish a *prima face* case of obviousness-type double patenting, the examiner is required to perform the same analysis as required under 35 U.S.C. §103(a) for the determination of obviousness. In particular, the MPEP requires that the examiner particularly point out the differences between the pending claims and the claims of the patent at issue and explain the why the differences would have been obvious to one of ordinary skill in the art. As the Office Action does not point out any of the differences between claims 1-23 of U.S. Patent 6,538,716 and the pending claims, and also does not provide any analysis or explanation as to why these differences would be obvious, it is respectfully submitted that the examiner has not presented a *prima face* case of obviousness-type double patenting. Accordingly, it is respectfully submitted that the rejection is improper and must be withdrawn.

In view of the above amendments and remarks, Applicants respectfully submit that all the claims are allowable and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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Attachments:

Substitute Specification
Marked-Up Specification